

46 Am. Jur. 2d Judges § 167

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

1. In General

§ 167. Who may move to disqualify judge—Intervenors

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(1)

West's Key Number Digest, [Parties](#)  45

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[Intervenor's right to disqualify judge, 92 A.L.R.2d 1110](#)

The right to disqualify a judge generally may be exercised by an intervenor, that is, one who is not an original party to a cause, but becomes a party in the course of the proceedings.¹

Once leave to intervene has been granted, even if on a limited basis, the intervenor has the right to apply for disqualification of the judge,² even if the plaintiff is content to try the lawsuit in that court.³ However, successful intervenors who intervened only for a limited purpose were precluded from seeking disqualification on the basis of an ex parte conversation between the judge and counsel, where all other parties to the suit consented to the conversation.⁴

The right of an actual intervenor to apply for disqualification of a judge has also been denied where some aspects of the case were judicially heard prior to the granting of the intervention.⁵

Before a petition for intervention is approved, a prospective intervenor is generally not considered a party to the proceeding, and is not allowed to disqualify the judge.⁶ Authority has held, however, that an intervention motion is a proceeding, and that a movant who believes that the judge is prejudiced should, for purposes of obtaining a hearing on the right to intervene, have the right to disqualify the judge.⁷

Where a petitioner's request for intervention has been denied, the petitioner is not a party to the lawsuit and may not request substitution of the judge.⁸

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Footnotes

- 1 State ex rel. Goodman v. Frater, 173 Wash. 571, 24 P.2d 66 (1933).
As to intervention, generally, see Am. Jur. 2d, Parties §§ 144 to 232.
- 2 U.S. v. South Florida Water Management Dist., 290 F. Supp. 2d 1356 (S.D. Fla. 2003).
- 3 Deutschmann v. Sears, Roebuck, & Co., 132 Cal. App. 3d 912, 183 Cal. Rptr. 573 (2d Dist. 1982).
- 4 In re Beard, 811 F.2d 818 (4th Cir. 1987).
- 5 Harms v. Coors, 1946-NMSC-008, 50 N.M. 12, 167 P.2d 353 (1946).
- 6 Pintek v. Superior Court In and For Cochise County, 78 Ariz. 179, 277 P.2d 265 (1954); State ex rel. Moore v. Fourth Judicial Dist. Court, 77 Nev. 357, 364 P.2d 1073 (1961).
- 7 Cuneo v. Superior Court for Merced County, 213 Cal. App. 2d 452, 28 Cal. Rptr. 791 (5th Dist. 1963).
- 8 Matter of Veatch's Estate, 93 Ill. App. 3d 413, 48 Ill. Dec. 799, 417 N.E.2d 201 (3d Dist. 1981).

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